

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**Misc. LAND APPEAL CASE No. 6 OF 2022**

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in  
Land Application No. 121 of 2021 & Originating from Nyegina Ward Tribunal in  
Land Dispute No. 24 of 2017)*

**DARIUS PUPUN SAASITA ..... APPELLANT**

***Versus***

**SERIKALI YA KIJJI CHA KURUKEREGE ..... RESPONDENT**

**JUDGMENT**

10.05.2022 & 10.05.2022

**Mtulya, J.:**

Mr. Darius Pupun Saasita (the appellant) had applied for enlargement of time at the the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Application No. 121 of 2021** (the application) to file Review in the district tribunal to test the validity of the decision of **Nyegina Ward Tribunal** (the ward tribunal) in **Land Dispute No. 24 of 2017** (the dispute). In order to persuade the tribunal to decide in favour of his application the appellant hired the legal services of Mr. Amosi Wilson, learned counsel to register two (2) reasons of the delay namely: first, failure of the ward tribunal to serve the appellant during the hearing of the

dispute; and secondly, illegality of the decision of the ward tribunal in relation to decision of this court in **PC Criminal Appeal No. 39 of 2018** (the criminal appeal). After production of materials in favour of the reasons of delay, the district tribunal on 11<sup>th</sup> November 2021 decided against the appellant. However, the tribunal resolved only one (1) point of delay and declined to determine the issue of claimed illegality of the decision of the ward tribunal in relation to the criminal appeal.

The decision of the district tribunal aggrieved the appellant hence filed the said two (2) reasons of delay in this court praying this court to consider them in **Misc. Land Case Appeal No. 6 of 2022** (the appeal) contenting that first the tribunal did not consider decision of this court in the criminal appeal registered during the hearing of the application to justify a point of illegality.

The appeal was scheduled for hearing today morning and after short consultations and discussions in learned minds of the appellant and respondent, namely, Mr. Amos Wilson and Mr. Nathan Mude assisted by Flora Peter, learned State Attorneys, respectively, decided to cherish section 3A & 3B of the **Civil procedure Code** [Cap. 33 R.E. 2019] and section 66 of the Advocates Act [Cap. 341 R.E. 2019] by agreeing that the complaint on illegality was not determined at the

district tribunal and it will be improper for this court to determine the same at this stage and advised the matter be remitted to the district tribunal to resolve the second point on illegality and consider the decision in the criminal appeal.

I perused the record of the present appeal and found out that the record of the tribunal conducted on 17<sup>th</sup> September 2021, both parties through their learned minds in Mr. Wilson and Mr. Nathan registered materials which displayed two (2) points of enlargement of time; first, proof of service to the appellant; and second illegality related to the decision of this court the Criminal Appeal decided on 13<sup>th</sup> June 2019 & originated at **Mugango Primary Court** in **Criminal Case No. 14 of 2018** between **Darius Pupun v. Song'ora Bitu**.

However, the district tribunal during drafting of the decision declined to resolve the second reason on the allegation of illegality of the decision of the ward tribunal by inviting the criminal appeal. The available precedents from this court in the decision of **Agripa Fares Nyakutonya v. Baraka Phares Nyakutonya**, Civil Appeal No. 40 of 2021 and Court of Appeal in **Swabaha Mohamed Shoshi v. Saburia Mohamedi Shoshi**, Civil Appeal No. 98 of 2018, is to the effect that: *it is a settled law that a matter which was not decided by subordinate*

*courts cannot be determined by this court or a matter not resolved by this court, cannot be determined by the Court of Appeal.*

In the premises, and considering the settled law on the subject, I allow the appeal and quash the decision and orders of the district tribunal and direct the district tribunal, under the same chairman, to compose a fresh and proper decision that will comprise all two (2) reasons of delay in the application as per requirement of the law regulating allegation of illegality in determining an application for enlargement of time.

The determination of the issues should commence immediately and complete within two (2) months from the date of this judgment. I awarded no costs in this appeal as the learned minds representing the parties in this appeal acted as officers of this court and are searching justice to the parties without ill-will or delay of justice.

Ordered accordingly.

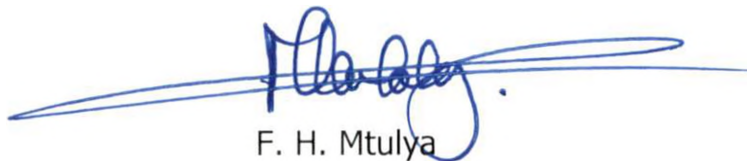


F. H. Mtulya

**Judge**

10.05.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Darius Pupun Saasita and his learned counsel, Mr. Amosi Wilson and in the presence of Kurukerege Village Chairman Mr. Justine Bugingo, and learned State Attorneys, Mr. Nathan Mude & Flora Peter.



F. H. Mtulya

**Judge**

10.05.2022